to be better complied with by the minority opinion than by the majority, in inferring from "otherwise" that the misrepresentation meant is misrepresentation that in law injures the person whose name is forged. And even though the code enjoins that penal acts be construed according to their fair meaning and not strictly, still perhaps some weight should have been given the fact that under the minority opinion the derogation of the common law would have been less than it is under the prevailing opinion: a letter of introduction, because it affected no legal rights, was not the subject of forgery at common law. *Waterman* v. *People,* 67 Ill. 91.

DAMAGES—BREACH OF CONTRACT—LOSS OF FUTURE PROFITS.—The plaintiffs, brokers in groceries, made a written contract with the defendant, a corporation engaged in the business of catching and packing fish, whereby the latter appointed them its exclusive agents for two years to sell 85 per cent. of its pack of fish, upon a brokerage of 5 per cent. At the end of the first year the defendant repudiated the contract and gave its business to another broker. *Held,* the contract was not invalid for want of mutuality of obligation; and the loss of *future* as well as of past profits, proximately resulting from its breach, is a proper element of damage, upon which evidence of sales made by the defendant through other agents is admissible. *Emerson et al* v. *Pacific Coast and Norway Packing Co.* (1905), — Minn. —, 104 N. W. Rep. 573.

The contract was signed by both parties; it obligated plaintiffs to use their best efforts to sell defendant's merchandise, and they incurred expenses thereunder. Hence, it was not optional on one side, but had mutuality of obligation, and an action for damages would lie upon its breach without cause. *Ames-Brooks Co.* v. *Aetna Ins. Co.,* 83 Minn. 346; *Fontaine* v. *Baxley,* 90 Ga. 416. But the most important question is whether evidence of sales made by the principal after the breach of the contract by the discharge of the salesman is admissible to show the extent of gains prevented. *Witherbee and Gray* v. *Meyer,* 155 N. Y. 446, well states, as the general rule, that the party injured by a breach of contract is entitled to recover gains prevented as well as losses sustained, subject to two conditions: (1) they must have been fairly within the contemplation of the parties at the time the contract was made; and (2) they must be certain, not only in their nature, but as respects the cause from which they proceed. Is the latter condition here complied with? Upon similar facts in *Union Refining Co.* v. *Barton,* 77 Ala. 148, STONE, C.J., said: "The success of such an enterprise depends on so many contingencies that we can conceive of no means of making the necessary proof on which to found a verdict." *Brigham* v. *Carlisle,* 78 Ala. 243; *Beck* v. *West and Co.,* 78 Ala. 213; *Hair* v. *Barnes,* 26 Ill. App. 580; *Stern* v. *Rosenheim,* 67 Md. 503; *Howe Machine Co.* v. *Bryson,* 44 Ia. 159; *Washburn* v. *Hubbard,* 6 Lans. 11. However, JAGGARD, J., seems correct in holding that the trend of authority and the weight of reason have established that an agent is entitled to damages for the future profits he would have made; and that such damages are not too conjectural and speculative, where profits are necessarily within the actual contemplation of both parties. *Beeman* v. *Banta,* 118 N. Y. 538; *Wells* v. *National Life Association,* 99 Fed. Rep. 222; *Mueller* v. *Mineral*

Spring Co., 88 Mich. 390; *Pittsburg Guage Co.* v. *Ashton Valve Co.*, 184 Pa. St. 36; *Blair* v. *Laflin*, 127 Mass. 518; *Stevenson* v. *Morris Machine Works*, 69 Miss. 232; *Green* v. *Cole*, 127 Mo. 587; *Russell* v. *Manf'g. Co.*, 41 Neb. 567; *Treat* v. *Hiles*, 81 Wis. 280. See also the exhaustive note in 53 L. R. A. 33, and 8 AM. & ENG. ENC. OF LAW (2nd ed.) 620.

DEEDS—CONSIDERATION—PROMISE TO SUPPORT.—Plaintiff (74 years old) deeded all his land to defendant in consideration of defendant's promise to pay plaintiff's debts, and find him food, clothing, medical attendance, home, and other things needful to his condition, for the rest of his days; and after defendant had performed his part of the contract for some time, plaintiff brought this action to cancel the deed, for want of consideration. *Held*, that there was sufficient consideration to support the conveyance, though the defendant's promises were oral; and therefore that the judgment declaring the deed cancelled must be reversed. *Norris* v. *Lilly* (1905), — Cal. —, 82 Pac. Rep. 425.

The argument on which it was claimed that the consideration was insufficient, was want of mutuality, inasmuch as defendant had obtained performance of plaintiff's part, and the contract was of such a nature that specific performance could not be enforced against the defendant. A suit to cancel a similar deed on this ground was sustained, and the deed cancelled for this reason in *Grimmer* v. *Carleton* (1892), 93 Cal. 185, 28 Pac. 1043, 27 Am. St. Rep. 171; and this case was the reliance of plaintiff's counsel and the court below. The present case is worthy of note principally because it overrules that case and establishes the doctrine generally recognized that a deed is not invalid for want of mutuality if the grantor had any remedy for breach. While it is true that specific performance will not be decreed to one not himself liable to the same remedy, that doctrine has no application to this case; and though a contract may not be enforcible specifically, it does not follow that it is void. This case is also worthy of note as another of those sad and ill-advised cases of conveyance in consideration of support.

DEEDS—IMPLIED FEE—FEE ON FEE.—A deed was executed by parents to two of their children, conveying the homestead in these words: "In consideration of the sum of $2,400 in hand paid, convey and warrant to A. Fred Cover and Bessie Cover of [&c., describing the property and releasing homestead] * * * In case of the death of either A. Fred Cover or Bessie Cover, the other to have the whole of said property without litigation." A. Fred Cover died leaving several brothers and sisters and his mother his heirs. A creditor of one of these heirs of A. Fred had the interest of such heir levied on and sold on execution against such heir. Now Bessie files this bill to have such sale and certificate of sale declared void, and the title decreed to be in her absolutely. *Held*, that an estate in common to her and her brother for their joint lives was given by the deed, with a contingent remainder to the survivor in fee, which vested in her on the death of her brother. *Cover* v. *James et al.* (1905), — Ill. —, 75 N. E. Rep. 490.

The defendants contended that by virtue of the words convey and warrant a fee passed to the grantees, and that the added provision was an ineffectual